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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JAMES J. BYRNES et al., Plaintiffs and Respondents, v. JOHN T. RENDON, Defendant and Appellant.	A104556 (San Francisco City & County Super. Ct. No. CGC-02-415255)

John T. Rendon (Rendon) leased property in San Francisco (the property). Originally, he had signed a one-year lease that specified that the property was subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (rent control ordinance). After the one year expired, Rendon remained in possession of the premises on a month-to-month tenancy.

James J. Byrnes and Ingeborg E. Byrnes (the Byrnes) are trustees of the Cecil H. Byrnes revocable trust, which purchased the property while Rendon was a tenant on the month-to-month lease. The Byrnes decided to change the terms of the tenancy to remove the application of the rent control ordinance, since the property was legally exempt from this ordinance. The Byrnes filed a complaint for declaratory relief, seeking a judicial declaration of their right to change the terms of Rendon's tenancy by removing the rent control ordinance. The trial court granted summary judgment in the Byrnes' favor and

Rendon appeals, arguing that the Byrnes cannot change the terms of the lease and are estopped from denying the applicability of the rent control ordinance. We are unpersuaded by Rendon's argument and uphold the lower court's decision.

BACKGROUND

Rendon entered into a written rental agreement (the lease) to be a tenant of the property. The property is a two-unit residential building constructed in 1985. The original written lease, signed by Rendon and Mark D. Zimmerman (Zimmerman), the real estate broker, specified that it was to begin October 15, 1994 and end October 31, 1995. According to Rendon, Zimmerman showed him the apartment and told him orally that the apartment was subject to the rent control ordinance. The lease had a box adjacent to the following term: "This unit is subject to rent control and the agency responsible to adjudicate claims is: Residential Rent Stabilization Board." The box was marked, indicating this clause was in force, and Rendon and the person who owned the property at the time placed their initials next to the rent control provision. Rendon declared that he would not have rented this apartment "had the landlord not checked the box on the rental agreement which recited the fact that the apartment was subject to rent control." After one year, Rendon continued leasing the premises on a month-to-month basis.

The Byrnes are trustees of the Cecil H. Byrnes revocable trust, and the trust became the owner of the property in the summer of 2003. At this time, Rendon and his roommate were tenants of one of the two units. The Byrnes decided to change the terms of Rendon's tenancy to remove the provision stating that the rent control ordinance applied. On January 13, 2003, Rendon filed a petition with the San Francisco Rent Board (rent board), claiming an illegal rent increase by the prior owner of the property[1] and a determination that the rent board had jurisdiction over the premises.

A hearing was held before the administrative law judge of the rent board on February 14, 2003, and a decision was issued on March 17, 2003. The administrative

[1] The Byrnes had not imposed any rent increases prior to this lawsuit and after they acquired the building.

law judge found, in pertinent part: "There is no dispute that the subject building was first constructed as a two unit building in 1985 and is not a single family dwelling. The building was also not constructed subsequent to an Ellis Act eviction. Accordingly, the subject building is exempt from the Rent Board's jurisdiction because it is new construction for which a certificate of occupancy was first issued after the effective date of the Rent Ordinance. [¶] . . . The terms of the Rent Ordinance, and not the parties, determine the jurisdiction of the Rent Board and the Rent Ordinance does not authorize parties to confer jurisdiction on the Board where it otherwise does not exist. While the parties may agree to be bound by the terms of the Rent Ordinance, such an agreement confers private contractual rights that may be enforced in state court, but not by the Rent Board. Accordingly, the Rent Board does not have jurisdiction over the subject rental unit."

The Byrnes filed a complaint for declaratory relief against Rendon and his roommate.[2] They requested a judicial declaration that the Byrnes were entitled to withdraw the tenancy from coverage by the rent control ordinance. The Byrnes moved for summary judgment on their pleading. The trial court granted the motion on August 25, 2003, ruling that the Byrnes were entitled to withdraw the tenancy from coverage by the rent control ordinance as a matter of law and therefore no triable issue of material fact existed. The court entered judgment in favor of the Byrnes on September 3, 2003. Rendon filed a timely notice of appeal.

DISCUSSION

I. *Standard of Review*

Summary judgment is properly granted if the record establishes no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A plaintiff moving for summary judgment has met the burden of showing there is no defense to a cause of action if the plaintiff has proved

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[2] The complaint also was filed against Rendon's roommate, but he is not a party in this appeal.

each element of the cause of action. (§ 437c, subd. (p)(1).) Once the plaintiff meets this burden, the defendant must show a triable issue of fact exists as to that cause of action. (*Ibid.*) We review the record de novo, "considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

II. *Estoppel*

Rendon maintains that the Byrnes are estopped from denying the applicability of the rent control ordinance. Rendon argues that the prior owner specifically represented to him that the rent control ordinance applied, and he would never have rented the property had he known it did not apply.

The requisite elements for equitable estoppel against a private party are: " ' " '(1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.' " [Citation.]' " (*Migliore v. Mid-Century Ins. Co.* (2002) 97 Cal.App.4th 592, 606.) It is well settled that estoppel is not favored and must clearly be proved. (*Lorenz v. Rousseau* (1927) 85 Cal.App. 1, 7.)

The doctrine of estoppel has been codified in Evidence Code section 623. This provision provides: "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." (Evid. Code, § 623.)

Even if we were to presume that the Byrnes could be bound by representations by the prior owner of the property, Rendon presented no facts that the prior owner knew that the rent control ordinance did not apply or that the prior owner intended to induce Rendon to enter into the rental agreement. It is undisputed that the rent control ordinance

does not apply, but Rendon offered absolutely no evidence that the prior owner knew this. Further, there is absolutely no evidence that the prior property owner intended to induce Rendon to sign the lease by marking the box indicating that the rent control ordinance applied.

Rendon argues that the mere fact that the prior owner had marked the box regarding the rent control ordinance raises a triable issue of fact. However, this fact sheds no information on what the prior owner actually knew or intended. "The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(1).) A party cannot avoid summary judgment based on mere speculation and conjecture (*Pena v. W.H. Douthitt Steel & Supply Co.* (1986) 179 Cal.App.3d 924, 931 [superseded by statute on another issue]), but instead must produce admissible evidence raising a triable issue of fact. (*Craig Corp. v. County of Los Angeles* (1975) 51 Cal.App.3d 909, 915.)

Not only is the record devoid of facts regarding the prior owner's knowledge or intent, but the record also does not support a finding of detrimental reliance. Rendon asserted that he would not have rented the property had he known that the rent control ordinance did not apply. However, it is not asserted that the prior owner carried out any action that contravened the rent control ordinance during the period the one-year lease was in effect. After the one-year lease expired, Rendon became a month-to-month tenant. Nothing in the record indicates that the prior owner made any promises regarding the property after the one-year lease lapsed.

The Byrnes are entitled to change the terms of a month-to-month lease if they give the proper notice. Civil Code section 827, subdivision (a) provides in relevant part: "[I]n all leases of lands or tenements, or of any interest therein, from week to week, month to month, . . . , the landlord may, upon giving notice in writing to the tenant . . . change the terms of the lease to take effect, . . . at the expiration of not less than 30 days . . . ."

Further, a month-to-month lease may be terminated by giving at least a 30-day written notice of termination. (§ 1946.) Thus, once Rendon accepted the month-to-month lease, he accepted the terms that the property owner could change the terms of the lease or terminate the lease with the proper notice. Accordingly, Rendon cannot establish any detrimental reliance.

Other than present evidence that Rendon believed the rent control ordinance applied, which is only one element of the test for estoppel, Rendon has presented no evidence to support the other three essential elements of estoppel. Accordingly, the trial court properly found that estoppel did not apply as a matter of law.

III. *Evidence Code Section 622*

Rendon argues that Evidence Code section 622 bars the Byrnes from changing the terms of the rental agreement. Section 622 provides: "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest; but this rule does not apply to the recital of a consideration." Rendon argues that whether the rent control ordinance applies to the lease is not a term of the lease; rather, he maintains, it is "an underlying premise of the rental agreement, a fact recited in the written instrument." Additionally, Rendon asserts, the Byrnes cannot "rebut the contract recital."

The Byrnes, however, never argued that the provision regarding the rent control ordinance had no application to Rendon's tenancy during the term of the lease. As discussed *ante,* the original written lease expired October 31, 1995. Once the lease lapsed, the obligations of the parties also terminated. "If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year." (Civ. Code, § 1945.) Thus, the same terms are renewed for 30 days but, as already discussed, the Byrnes could change these terms upon the giving of proper notice (§ 827, subd. (a)), and could even terminate the lease upon proper notice (§ 1946).

Accordingly, the statute permitted the Byrnes to modify the terms set forth in the one-year lease once the parties had fully performed.

Rendon's argument that the provision in the original lease regarding the rent control ordinance is an underlying premise, not a term, makes no sense. It is undisputed that the rent control ordinance does not cover the property. Since no statute makes it applicable, it could only govern the property as a negotiated term of a contract. Here, the lease did conclusively provide that the rent control statute applied and that the agreement was for one year. During that year, under Civil Code Section 622, the rent control ordinance applied as a negotiated term. However, nothing in this agreement stated that the provision regarding the rent control ordinance extended beyond the one-year time period.[3] Accordingly, once the one-year term expired, the agreed upon terms—including the negotiated term of the application of the rent control ordinance—remained only if one party did not change them. Here, the Byrnes, upon the proper notice, modified the term referring to the rent control ordinance. The Byrnes, as a matter of law, could make such a change to the month-to-month lease. (See Civ. Code, § 827, subd. (a).)

IV. *Changing the Terms of the Tenancy*

Rendon argues that the Byrnes could not serve a notice stating that the unit was no longer subject to the rent control ordinance because, at the time the notice was issued, the property was subject to the rent control ordinance. Rendon cites various provisions from the rent control ordinance that prevent eviction of a tenant.

This argument is completely unpersuasive. As discussed *ante,* the rent control ordinance does not apply to the property and the rent board ruled it has no jurisdiction

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[3] Rendon appears to be arguing that the parties agreed that the property is subject to the rent control ordinance, and that this agreement is legally binding. The parties, however, cannot make legal determinations. Indeed, the administrative law judge of the rent board found that the rent control ordinance does not apply to the property. The parties could agree that they were binding themselves to the rent control ordinance during the one-year tenancy. Thus, Rendon's right to have his tenancy governed by the rent control ordinance was a contractual right and only effective as long as the terms of that contract remained effective.

over Rendon's tenancy. Thus, the rules cited by Rendon have no bearing on this case. Further, there is no allegation that the Byrnes have attempted to evict Rendon.

Rendon maintains that the rent board's decision that it does not have jurisdiction is irrelevant to the issues raised by this appeal, because the rent board expressed no opinion as to whether the parties were bound by the terms of the rent control ordinance based on private contractual rights. It is undisputed that legally the rent control ordinance did not apply because the property was built in 1985. We agree that the rent board's decision does not, and cannot, adjudicate the parties' respective contract rights. We, however, have already held that the Byrnes could modify the contract terms of the month-to-month lease pursuant to Civil Code section 827 and they therefore could alter the provision pertaining to the rent control ordinance.

DISPOSITION

The judgment is affirmed. The Byrnes are awarded costs.

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Lambden, J.

We concur:

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Kline, P.J.

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Ruvolo, J.